

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

GINA PACHECO, ET AL.,

Plaintiffs,

v.

PEDRO A. TOLEDO-DAVILA, ET AL.,

Defendants.

Civil No. 10-1480 (ADC)

ORDER

Plaintiffs, Gina Pacheco, on behalf of minors, G.A.P. 1 and G.A.P. 2, in their personal capacities and as heirs of the Estate of Elis Manuel Andrades-Telleria, and Elis Manuel Andrades-Molina (collectively “plaintiffs”) filed this action against former Puerto Rico Police Department (“PRPD”) Superintendent Pedro Toledo-Dávila (“Toledo”), PRP Associate Superintendent John Doe (“Doe”), PRP Auxiliary Superintendent in charge of Public Integrity Richard Roe (“Roe”), PRP Commanding Officer of the Carolina District Jimmy Ortíz-Cruz (“Ortíz”), PRP Officer Osvaldo Hernández-Adorno (“Hernández-Adorno”), and his supervisors; as well as the Municipality of Carolina, Carolina Municipal Police Commissioner, Carolina Municipal Police Officer Daniel Cruz-Andino (“Cruz”), as well as other unnamed defendants, each in their individual and official capacity. **ECF No. 1.**

Plaintiffs allege, *inter alia*, violations of civil rights and claim damages pursuant to section 1983 and section 1988 of Title 42 of the United States Code (“section 1983” and “section 1988”), for violations of the Fourth Amendment and under the Commonwealth of Puerto Rico’s (“Commonwealth”) general tort statute. They aver that decedent Elis Andrades-Telleria was illegally detained, arrested, searched, his property was illegally seized and he was deprived of his life, in violation of his Constitutional rights. *Id.*

Pretrial management of the case was referred to Magistrate-Judge Silvia Carreño-Coll, which included the issuance of a Report and Recommendation (“R & R”) as to dispositive motions. **ECF NO. 119.** Now before the Court are two motions for summary judgment, one

filed by Co-Defendants Pedro A. Toledo, Jimmy Cruz-Ortiz, Jorge D. Reyes-Quñones, and Ricardo Cruz ("the Supervisory Defendants")(ECF No. 187) and another filed by the Municipality of Carolina ("Municipality")(ECF No. 185). On July 19, 2013, the Magistrate-Judge issued an R & R which recommended granting the two motions for summary judgement and dismissing the complaint against the defendants in its entirety. ECF No. 227.¹ Plaintiffs did not object or otherwise oppose the R & R and the time to do so has expired.

I. Standard of Review for an Unopposed Report and Recommendation

A district court may refer pending motions to a magistrate-judge for a report and recommendation. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b); Loc. Cv. R. 72(a). Any party adversely affected by the recommendation issued may file written objections within ten (10) days of being served with the report and recommendation. *See* 28 U.S.C. § 636(b)(1). A party that files a timely objection is entitled to a *de novo* determination of "those portions of the report or specified proposed findings or recommendations to which specific objection is made." *Sylva v. Culebra Dive Shop*, 389 F. Supp. 2d 189, 191-92 (D.P.R. 2005) (citing *United States v. Raddatz*, 447 U.S. 667, 673 (1980)).

"Absent objection, ... [a] district court ha[s] a right to assume that [the affected party] agree[s] to the magistrate's recommendation." *López-Mulero v. Valez-Colón*, 490 F. Supp. 2d 214, 217 -218 (D.P.R. 2007) (citing *Templeman v. Chris Craft Corp.*, 770 F.2d 245, 247 (1st Cir. 1985), *cert. denied*, 474 U.S. 1021 (1985)). Moreover, in conducting its review of an unopposed R & R, the court "needs only [to] satisfy itself by ascertaining that there is no 'plain error' on the face of the record." *López-Mulero*, 490 F. Supp. 2d at 218.

II. Conclusion

After careful examination of the record and the unopposed R & R, the Court hereby **ADOPTS** the R & R (ECF No. 227) in full. The Municipality's and the Supervisory Defendants' motions for summary judgement (ECF Nos. 185, 187) are **GRANTED**. As a

¹The R & R specifically stated that failure to file objections by August 5, 2013 waives the right to appeal the R & R. ECF No. 227.

result, plaintiffs' complaint (ECF No. 1) is hereby **DISMISSED WITH PREJUDICE**. Supervisory Defendants' motions to strike (ECF Nos. 205, 206) are **DENIED**. Plaintiffs' cross-motion for summary judgment (ECF No. 196) is **DENIED**.

The Clerk of the Court is to enter Judgement accordingly.

SO ORDERED.

At San Juan, Puerto Rico, on this 6th day of August, 2013.

S/AIDA M. DELGADO-COLÓN
Chief United States District Judge